

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Jail Appeal No.S-111 of 2024

Date	Order with signature of Judge
	<div>1. For hearing of on M.A. No.4945/24</div> <div>2. For hearing of main case.</div>
Appellants:	Ghulam Nabi, Azizullah, Sanaullah, Attaullah and Pathan alias Noor Muhammad, through Mr. Achar Khan Gabole, Advocate.
Respondent:	The State through, Mr. Khalil Ahmed Maitlo, Deputy Prosecutor Gneral.
Date of hearing:	24.02.2025
Date of Judgment:	24.02.2025.

J U D G M E N T

**Riazat Ali Sahar, J.** Appellants Ghulam Nabi, Azizullah, Sanaullah, Attaullah, and Pathan alias Noor Muhammad have challenged the judgment dated 27.09.2024, passed by the learned Special Judge for Gender-Based Violence/Additional Sessions Judge-IV, Khairpur, in Sessions Case No. 137 of 2022, arising out of Crime No. 161/2021, registered at Police Station Kotdiji for offences under Sections 365-B, 511, 506(2), 337H(ii), 148, and 149 of the Pakistan Penal Code (PPC). Through the impugned judgment, the appellants

were convicted under Sections 365-B/511 read with Section 149 PPC and sentenced to rigorous imprisonment for ten years, along with a fine of Rs. 50,000/- each. In case of non-payment of the fine, they were directed to undergo simple imprisonment for a further six months. Additionally, all the accused/appellants were convicted for the offence punishable under Section 506(2) PPC read with Section 149 PPC and sentenced to rigorous imprisonment for three years, along with a fine of Rs. 20,000/- each, failing which they would suffer simple imprisonment for six months more. Furthermore, the appellants were convicted under Section 148 PPC read with Section 149 PPC and sentenced to rigorous imprisonment for one year, along with a fine of Rs. 20,000/- each, and in case of default, they were to undergo simple imprisonment for one month. It was further directed that all sentences shall run concurrently, and the benefit of Section 382-B Cr.P.C. was also extended to the appellants.

2. The prosecution case, in summary, is that the complainant lodged an FIR at Police Station Kotdiji, stating that his house comprises three rooms, facing eastward, enclosed by a hedge, with entrance doors affixed on both the eastern and western sides. The complainant alleged that the accused persons had previously sought the hand of his daughter, Mst. Uzma, in marriage, but upon his refusal, they remained resentful. On 29.12.2021, at approximately 9:00 a.m., while the complainant, his daughter Uzma, his cousin Qurban Ali Katohar, and other household members were present at home, the accused persons,

armed with a gun, repeater, and pistols, forcibly entered the premises of house. It is alleged that accused Sanaullah Katohar attempted to drag Uzma from her cot, causing her to raise cries. Her screams attracted the attention of Rahib Katohar and other co-villagers, who rushed to the scene while raising hakals (alarm calls). Upon noticing the arrival of villagers, the accused brandished their weapons at the complainant and his family, threatening them with dire consequences should the complainant refuse to give his daughter's hand in marriage to Sanaullah. Following the incident, the complainant approached his nek mard (village elder), who advised him to lodge an FIR. Acting upon this advice, the complainant proceeded to the police station and formally registered the case.

3. After the usual investigation, the police submitted the challan against the appellants/accused before the competent court of law. The learned trial court, after completing all legal formalities, framed the charge against the appellant-accused at Ex.2, to which he pleaded not guilty and claimed trial. The plea of the accused was recorded at Ex.3 to Ex.7.

4. In order to prove its case, the prosecution examined the following prosecution witnesses (PWs):

- **PW-1: Complainant Muhammad Sikandar Katohar**
- **PW-2: Victim Uzma Katohar**
- **PW-3: Qurban Ali Katohar**
- **PW-4: Akhtiar Ali Katohar**
- **PW-5: HC Talib Hussain Siyal**

- **PW-6: SIP Nazir Ahmed Soomro**

They also produced all the requisite documents in support of the case. Thereafter, the learned ADPP closed the prosecution's side by filing the statement a statement recorded at Ex.15.

5. After the completion of the prosecution's evidence, the learned trial court recorded the statements of the appellant under Section 342 of the Code of Criminal Procedure (Cr.P.C.), wherein he denied the prosecution's case and claimed innocence.

6. The learned trial Court after hearing the Counsel for the appellant, learned ADPP for the State and considering the evidence, passed impugned judgment dated 27.09.2024, which has been assailed through instant jail appeal.

7. Learned counsel for the appellants/accused contended that the appellants are innocent and have been falsely implicated in this case with *malafide* intent. He argued that the impugned judgment is contrary to the facts of the case and the settled principles of law. He further submitted that there is an unexplained delay of one day in the lodging of the FIR, which raises doubts about the veracity of the prosecution's case. Additionally, he pointed out that there are material contradictions in the evidence of prosecution witnesses, which create serious doubt regarding the prosecution's version of events. He concluded that the prosecution has failed to establish its case beyond a reasonable doubt, and as per the settled principle of criminal jurisprudence, the benefit of doubt must be extended to

the accused. Therefore, he prayed that the appellants be acquitted of the charges.

8. Learned Deputy Prosecutor General supported the impugned judgment and pray for the conviction of the appellants and maintaining the impugned judgment.

9. I have heard learned Counsel for the appellant, learned D.P.G for the State and have examined the record carefully.

10. The prosecution examined six eye-witnesses, including the complainant Muhammad Sikandar, victim Mst. Uzma, PWs/eye-witnesses Qurban Ali and Rajib, as well as the Investigating Officer (I.O.) and the mashir. The complainant, the PWs, and the victim deposed that the accused were aggrieved with the complainant's family due to the refusal to give Mst. Uzma's hand in marriage.

Complainant Muhammad Sikandar, in his deposition, stated:

*"Mst. Uzma, aged about 22/23 years, is my daughter, and accused Ghulam Nabi, Azizullah, Sanaullah, Attaullah, and Pathan alias Noor Hassan were annoyed with us due to my decision to give my daughter's hand in marriage to one Lakha Dino. On 29.12.2021, while I, along with my daughter Uzma, cousin Qurban Ali, and other family members, were sitting in our house at about 9:00 a.m., we saw the accused persons, armed with weapons, entering our house. Upon arrival, they*

*demanded my daughter Mst. Uzma for his brother, but I refused and replied that I would not give my daughter's hand to my cousin. Meanwhile, accused Sanaullah forcibly caught hold of my daughter Mst. Uzma and dragged her with the intention of abducting her, upon which my daughter raised cries. On hearing her cries, my maternal cousin Rajib Ali Katohar and other villagers rushed to the scene. Seeing them, the accused left my daughter and fled while issuing threats and making aerial firing. I identified the accused."*

11. The victim Mst. Uzma and PW Qurban Ali also supported the complainant's version. However, in her cross-examination, victim Mst. Uzma admitted:

*"It is correct that accused Attaullah and Sanaullah are my cousins, and prior to this incident, there were visiting terms between us... Again says that they were annoyed and sometimes they used to come and sometimes they did not come."*

PW Qurban stated in his Examination in chief:

*"...they were trying to abduct Uzma the daughter of complainant and accused seeing us fled away while extending threats..."*

Whilst in his cross-examination:

*“Accused person fled away after half an hour after seeing us”*

The complainant PW Muhammad Sikander deposed in cross examination:

*“at the time of site inspection my other neighbor relatives were also present and police also enquired the incident from them. It is correct to suggest that police did not ask from anybody to act as mashir. It is correct to suggest that I also did not ask any relative to act as mashir”*

12. It is manifestly evident that the alleged incident occurred in a public setting, and it is an admitted fact that the accused fled from the scene approximately half an hour after the occurrence. However, despite the purported presence of multiple witnesses at the place of the incident, no effort was made to include any independent and impartial witnesses (*mashirs*) to corroborate the prosecution's version of events. A glaring omission in the prosecution's case is the non-compliance with the mandatory requirement under Section 103 of the Code of Criminal Procedure (Cr.P.C), which necessitates that "two or more respectable inhabitants of the locality" be associated as witnesses in search and seizure proceedings. The investigating authorities, despite having ample opportunity, failed to enlist independent and disinterested witnesses, raising serious doubts about the fairness

and transparency of the investigation. Furthermore, even the complainant, who was not only a relative but also a resident of the locality, did not seek to involve neutral and respectable neighbours as *mashirs*, further weakening the prosecution's case. The deliberate exclusion of independent witnesses and the failure to adhere to procedural safeguards highlight significant discrepancies and inconsistencies in the prosecution's version. Such omissions are not mere irregularities but rather material defects that strike at the root of the case, rendering it legally untenable. The prosecution's failure to ensure the presence of credible and impartial witnesses, coupled with the complainant's omission to include any neutral individuals, strongly suggests *mala fides* on their part. This lack of corroboration, coupled with procedural lapses, casts serious doubt on the veracity of the allegations and undermines the evidentiary value of the case. The prosecution's failure to adhere to statutory requirements, particularly when the case hinges on disputed facts, violates the principles of fair trial and due process, warranting a cautious judicial approach in evaluating the evidence presented.

13. As regards the testimony of Investigating Officer SIP Nazir Ahmed, it fails to lend substantial support to the prosecution's version of events. In his examination-in-chief, he merely deposed that he had received a copy of the FIR through HC Talib Hussain Siyal on 30.12.2021, proceeded to inspect the alleged place of occurrence in the presence of mashirs Muhammad Bachal and



Akhtiar Hussain, prepared the mashirnama accordingly, and recorded the statements of the prosecution witnesses under Section 161 Cr.P.C. However, it is pertinent to note that, even on the prosecution's own showing, the case revolves around an *attempt* to abduct Mst. Uzma rather than an actual act of abduction, thereby materially affecting the nature and gravity of the alleged offence. Furthermore, the prosecution's case is riddled with multiple material contradictions within the testimonies of its own witnesses, which severely undermine the reliability and consistency required to sustain a criminal conviction. These discrepancies give rise to significant doubt and render the prosecution's version unworthy of credence. Importantly, during the course of final arguments, the complainant Muhammad Sikandar appeared in person before the Court and voluntarily submitted an affidavit, in which he unequivocally declared that the appellants are not the true perpetrators. He candidly admitted that both he and the witnesses had, due to a misunderstanding, implicated the appellants in the FIR and reiterated that he has no objection to their acquittal. This turn of events substantially weakens the prosecution's case and reinforces the principle that where there exists a shadow of reasonable doubt, the benefit thereof must necessarily go to the accused, not as a matter of grace, but as a matter of right.

13. For the reasons discussed above, we have reached the conclusion that the prosecution has utterly failed to establish its case against the appellant/accused beyond reasonable doubt. It is

a well-settled proposition of law that in order to extend the benefit of doubt to an accused, it is not necessary for multiple circumstances to exist that create uncertainty. Rather, if a single circumstance gives rise to a reasonable doubt regarding the guilt of the accused, then such doubt must be resolved in favour of the accused, entitling him to the benefit thereof. In this respect, reliance can be placed upon case of Muhammad Hassan and Another v. The State [2024 SCMR 1427, wherein the Honourable Supreme Court has held that:

*“According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/ lacuna in the prosecution case automatically goes in favour of an accused.”<sup>1</sup>*

13. Keeping in view the facts and circumstances of the case, the benefit of doubt was extended in favour of the appellants.

---

<sup>1</sup> See also; MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- “4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

See alos; Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

Consequently, the instant appeal was ***allowed*** through my short order dated 24.02.2025, whereby the appellants were acquitted of the charge and directed to be released forthwith, provided they were not required in any other custody case.

***The above constitute the reasons for the short order dated 24.02.2025.***

***J U D G E***